

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

PACIFIC 9 TRANSPORTATION, INC.

and

Case 21-CA-116403; 21-CA-150875

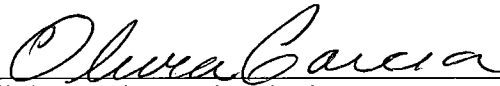
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

ORDER REFERRING PETITION TO REVOKE
SUBPOENA DUCES TECUM TO ADMINISTRATIVE LAW JUDGE

A Petition to Revoke Subpoena Duces Tecum B-1-QVE7AD having been filed with the Regional Director on March 23, 2016, by counsel for Respondent Pacific 9 Transportation, Inc.

IT IS ORDERED, pursuant to Section 102.31(b) of the Board's Rules and Regulations, that the Petition is hereby referred to the Administrative Law Judge for ruling.

Dated: March 30, 2016



Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

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5

6 Attorneys for Respondent- PACIFIC 9
TRANSPORTATION, INC.
7

8 **UNITED STATES OF AMERICA**
9 **BEFORE THE NATIONAL LABOR RELATIONS BOARD - REGION 21**
10

11 PACIFIC 9 TRANSPORTATION, INC.

Case Nos. 21-CA-116403 & 21-CA-150875

12 and

**PETITION TO REVOKE SUBPOENA
DUCES TECUM B-1-QVE7AD**

13 INTERNATIONAL BROTHERHOOD OF
14 TEAMSTERS PORT DIVISION
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16 Pursuant to Sec. 102.31(b) of the Boards regulations, Respondent Pacific 9 Transportation,
17 Inc. hereby petitions to revoke the attached Subpoena Duces Tecum B-1-QVE7AD dated March
18 18, 2016, and more particularly items, 2-14, 16, 17, 19 and 21 therein, on the following grounds:

19 1. The Subpoena demands the production of documents which are overly private and
20 confidential in nature and which would be overly burdensome to produce, including personnel
21 files, pay records, and lease agreements pertaining to persons who have not consented to the
22 production of such information and who are not parties to this dispute.

23 2. The Subpoena demands the production of documents which do not relate to any
24 matter under investigation or in question in this proceeding, in that it requests documents for an
25 overly broad time frame and which relate to drivers whose employee status is not in issue.

26 3. The Subpoena does not describe with sufficient particularity the documents for
27 which production is sought.
28

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1 4. The Subpoena requests the production of proprietary business information which, if
2 divulged to its competitors, could cause harm to Respondent's business operations.

3 WHEREFORE, the Subpoena should be revoked in its entirety.

4
5 Dated: March 23, 2016

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

6
7 By: 

Ronald W. Novotny
Attorneys for Respondent PACIFIC 9
TRANSPORTATION, INC.

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

Custodian of Records
Pacific 9 Transportation, Inc.
To 2045 E. Carson St., Unit B
Carson, CA 90810

As requested by Irma Hernandez, Counsel for General Counsel, Telephone (213)894-5236

whose address is 888 S Figueroa Street, Ninth Floor Los Angeles CA 90017-5449
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board
at Hearing Room 902, 888 S Figueroa St, Ninth Floor

in the City of Los Angeles, CA

on Monday, April 11, 2016 at 1:00 pm or any adjourned

or rescheduled date to testify in Pacific 9 Transportation, Inc., Cases 21-CA-116403 and 21-CA-150875
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

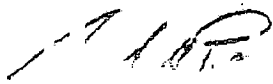
If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-QVE7AD

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Los Angeles, CA

Dated: March 18, 2016



NOTICE: Witness fees for attendance, if any, and mileage under this subpoena shall be payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

PACIFIC 9 TRANSPORTATION, INC., Cases 21-CA-116403 and 21-CA-150875
Subpoena Duces Tecum Attachment

DEFINITIONS & INSTRUCTIONS

1. The subpoena is intended to cover all documents that are available to Pacific 9 Transportation, Inc. ("Respondent") or subject to its reasonable acquisition, including, but not limited to, documents in the possession of attorneys, accountants, advisors, investigators, or other persons or organizations directly or indirectly employed by, or connected with, Respondent or its attorneys.
2. When use in this subpoena, the word 'document' or 'documents' means any existing printed, typewritten, handwritten or otherwise recorded material or whatever character, including, but not limited to, letters, correspondence, memoranda, telegrams, mailgrams, minutes notes, statement, affidavits, agreements, summaries, records of telephone conversations, telephone bills, recordation of personal conversations, interviews or meetings, transcripts, diaries, reports, charts, contracts, calendars, interoffice communications, books accounts, account receivable records, ledgers, journals, purchase orders, invoices, bills of lading, billing slips, delivery records, receiving records, photographs, microfilm, audio or video tapes, computer tapes of disks and electronic mail, and all data contained thereon that may be retrieved, including material stored on hard disks, and any carbon, photographic or other duplicate copy of such material in the possession of, control of, or available to the subpoenaed party or any attorney, agent, representative or other person acting in cooperation within concert with, or on behalf of the subpoenaed party.
3. The term 'person' or 'persons' means natural persons, corporations, partnerships, sole proprietorships, associations or any other kind of entity.
4. Any copies of original documents which are different in any way from the original, whether by interlineation, receipt, stamp, notations, and indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.
5. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
6. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:
 - (a) the author
 - (b) the recipient
 - (c) the date of the original document
 - (d) the subject matter of the document

7. If any document responsive to any request herein was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control, and identify (stating the person's name, employer title, business address, home address, and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
8. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, subject, recipients and intended recipients), explain the circumstances surrounding the destruction, discarding, or disposal of the documents, including the timing of the destruction, discharging or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.
9. This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
10. All documents in response to this subpoena should be organized by subpoena request paragraph.
11. The term "drivers" as used in this subpoena shall refer to those drivers performing truck driving or drayage services for Respondent.
12. The term "Port" as used in this subpoena shall refer to the Port of Long Beach and/or Los Angeles.
13. Whenever appropriate the masculine form shall be interpreted as feminine and vice-versa; and the singular form shall be interpreted as the plural and vice-versa.

DOCUMENTS TO BE PRODUCED

- 1) Respondent's memorandum dated March 28, 2014, to "owner operators and IC drivers" discussing the NLRB settlement of Case 21-CA-116403.
- 2) Documents showing the job duties and/or responsibilities of Respondent's drivers during the period from January 1, 2013, to the present date.
- 3) Documents showing Respondent's pre-hiring practices for its drivers including, but not limited to, job applications, interview notes, advertisements or listings with newspapers, internet, and/or agencies during the period from January 1, 2013, to the present date.
- 4) Documents showing Respondent's system of dispatching its drivers including, but not limited to, dispatch records, driver-assignments, and/or drivers' rejections of assignments during the period from January 1, 2013, to the present date.
- 5) Documents upon which Respondent relies for classifying its drivers as independent contractors including, but not limited to, Lease and Transportation Agreements between Respondent and drivers, in effect from January 1, 2013, to the present date.
- 6) Documents required to permit or enable Respondent or its drivers to operate its trucks in the Port and the State of California including, but not limited to, vehicle insurance policies, vehicle titles and registrations, service records, maintenance, California Highway Patrol, and U.S. Department of Transportation forms or records, in effect from January 1, 2013, to the present date.
- 7) Documents showing arrangements between Respondent and its drivers for leasing and/or purchasing trucks including, but not limited to, Truck Lease and Service Agreements, Purchase and Sale Agreements, and/or Release Agreements that purport to settle drivers' claims, effective from January 1, 2013, to the present date.
- 8) Documents showing Respondent's rates of payment to its drivers, and the methodology for determining such rates effective during the period from January 1, 2013, to the present date.
- 9) Documents showing warnings issued by Respondent to its drivers during the period from January 1, 2012, to the present date.
- 10) Documents showing new policies and/or procedures or existing policies and/or procedures for drivers including, but not limited to, memoranda, safety rules and the Contractor's Handbook, in effect during the period from January 1, 2012, to the present date.

- 11) Documents showing driver-interchange of dispatch assignments and/or driver-use of trucks leased from Respondent for performance of work for entities other than Respondent, for the period of January 1, 2013, to the present date.
- 12) Documents that Respondent requires its drivers to maintain or complete as part of their duties including, but not limited to, manifests, daily logs, reports, records, and/or forms, during the period from January 1, 2013, to the present date.
- 13) Documents showing the job duties and/or responsibilities of Respondent's dispatchers, during the period from January 1, 2013 to the present date.
- 14) Documents exchanged between and among Respondent's officers, owners, managers, supervisors and/or dispatchers, which address drivers' status as employees or independent contractors, terms of employment or service and/or collective conduct including, but not limited to, strikes, government filings or claims, and/or delegations, during the period from January 1, 2013, the present date.
- 15) Petition to Respondent signed by multiple drivers in September 2013 with reference to "Request to respect our right to file claims with the Division of Labor Standards Enforcement.
- 16) Documents showing driver-claims or coverage for unemployment under the California Unemployment Insurance Program since January 1, 2012, through the present date, including, but not limited to, determinations and/or awards of eligibility for unemployment compensation.
- 17) Documents showing driver-claims or coverage for California State Disability Benefits since January 1, 2012, through the present date, including any determinations of eligibility for disability.
- 18) Rulings, orders, decisions or awards of the California Division of Labor Standards Enforcement pursuant to wage claims filed by drivers against Respondent, which issued during the period from January 1, 2013, through the present date.
- 19) Determinations, rulings, decisions, findings or reports issued as a result of the California Employment Development Department's audit of Respondent, during the period from January 1, 2013, to the present date.
- 20) Rulings, orders, or decisions issued by the Superior Court of the State of California or any other State Court as a result of claims filed by Respondent's drivers before the California Division of Labor Standards Enforcement or motions in response thereto, during the period from January 1, 2013, the present date.

21) Complete and true copies of the personnel files of the following individuals, including documents showing their job title(s), job descriptions, and job duties during the period September 1, 2013, to the present:

- (a) Alan Ta
- (b) Chris Hong

22) For the period April 10 2013, to April 10, 2015, documents showing the names of any drivers who have been allowed by Respondent to perform yard work due the driver's inability to perform his regular job because of a medical restriction, a suspended license, or for any other reason, including the dates that yard work was performed by each driver and the reason the driver was unable to perform his regular duties.

With regard to the documents subpoenaed, Counsel for the General Counsel is willing to meet with the Respondent's designated or legal representatives, at a mutually agreed-upon time and place, prior to the return date of the subpoena, for the purpose of examining and/or copying the documents subpoenaed, and/or to enter into stipulations concerning the contents of subpoenaed documents, for the purpose of reducing trial time and expense.

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PROOF OF SERVICE
(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

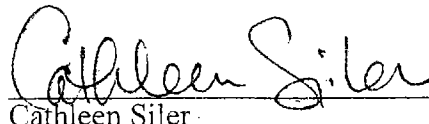
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703-9364.

On March 23, 2016, I served the following document(s) described as: **PETITION TO REVOKE SUBPOENA DUCES TECUM B-1-QE7AD** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

- ☐ **BY MAIL:** I deposited such envelope in the mail at Cerritos, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☒ **BY EMAIL:** My electronic service address is csiler@aallr.com. Based on a written agreement of the parties pursuant to California Code of Civil Procedure § 1010.6 to accept service by electronic means, I sent such document(s) to the email address(es) listed above or on the attached Service List. Such document(s) was scanned and emailed to such recipient(s) and email confirmation(s) will be maintained with the original document in this office indicating the recipients' email address(es) and time of receipt pursuant to CCP § 1013(a).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2016, at Cerritos, California.


Cathleen Siler

SERVICE LIST

Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S. Figueroa, Ninth Fl.
Los Angeles, CA 90017-5449
Olivia.Garcia@nlrb.gov

E-filing

Michael T. Manley, Esq.
Intl. Br. of Teamsters Port Division
25 Louisiana Ave. NW
Washington, DC 20001
MManley@teamster.org

Via e-mail

STATEMENT OF SERVICE

I hereby certify that a copy of **Order Referring Petition to Revoke Subpoena Duces Tecum B-1-QVE7AD to the Administrative Law Judge** has been submitted by e-filing to the Division of Judges of the National Labor Relations Board on March 30, 2016, and that each party was served with a copy of the same document by e-mail.

I hereby certify that a copy of the **Order Referring Petition to Revoke Subpoena Duces Tecum B-1-QVE7AD to the Administrative Law Judge** was served by e-mail, on March 30, 2016, on the following parties:

Ronald W. Novotny, Attorney at Law
Thomas A. Lenz, Attorney at Law
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Michael T. Manley, Staff Attorney
International Brotherhood of Teamsters
mmanley@teamster.org

Respectfully submitted,



Aide Carretero
Secretary to the Regional Attorney
National Labor Relations Board
Region 21